

**Notice of Allowability**

Application No.

10/089,148

Examiner

Janet L. Coppins

Applicant(s)

RHEINHEIMER ET AL.

Art Unit

1626

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicants' Amendment of September 8, 2004.
2. ☒ The allowed claim(s) is/are 1-9 and 14-20.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying Indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### DETAILED ACTION

Claims 1-9 and 14-20 pending in the instant application.

#### *Response to Amendment*

1. Receipt is acknowledged of Applicants' Amendment and Response, filed September 8, 2004, which has been reviewed by the Examiner and entered of record in the file. Accordingly, claim II has been cancelled as directed to non-elected subject matter, and new claims 17-20 have been added.

#### *Election/Restrictions*

2. Applicants have cancelled claim II as being drawn to a non-elected invention. Therefore, in accordance with *In re Ochiai* and *In re Brouwer*, the Examiner withdraws the Restriction Requirement. Note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

#### *Claim Rejections - 35 USC § 112*

3. Claim 16 previously rejected under 35 U.S.C. 112, first paragraph. In view of Applicants' persuasive arguments, the Examiner withdraws the enablement rejection to the claim.

#### *Claim Rejections - 35 USC § 103*

4. Claims I and 3-9 previously rejected under 35 U.S.C. 103(a) as being unpatentable over Yamanaka et al, JP 10-095771. In view of Applicants' persuasive arguments, the Examiner concedes that the instant compounds are not homologues over the Homare et al amidioxime compounds

### REASONS FOR ALLOWANCE

5. In view of Applicant's amendatory changes and cancellations, claims 1-9 and 14-20, newly renumbered as claims 1-16, are allowable over the prior art. The following is an examiner's statement of reasons for allowance:

This invention relates to novel benzamidoxime compounds that are active as fungicides, their compositions, methods of preparing them, and methods of using them. The claims in this case are 1-9 and 14-20, and the allowable compounds are limited to compounds according to formula (I). Benzamidoximes are known in the art as having horticultural fungicidal activity. However the aspect of preparing the instant claimed compounds is neither anticipated nor fairly suggested by the prior art. The compounds of formula I have are suitable for controlling a broad range of phytopathogenic fungi, in particular from the classes of the Ascomycetes, Deuteromycetes, Phycomycetes and Basidiomycetes. After a thorough search, the closest of prior art, Yamanaka et al JP 10-095771, was found to teach similar benzamidoxime compounds with fungicidal activity. However the JP document fails to disclose the same compounds as instantly claimed, since the core structures differ in the introduction of a methylene group between the cyclic moiety and the amidoxime group in the instant claims. Therefore, the prior art fails to teach, anticipate, or fairly suggest the instant claimed benzamidoximes, their agrochemical compositions or their use for controlling harmful fungi.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

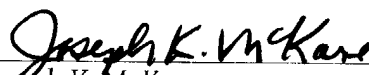
*Telephone Inquiry*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet L. Coppins whose telephone number is 571.272.0680. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on 571.272.0699. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Janet L. Coppins  
December 9, 2004

  
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Joseph K. McKane  
SPE, Art Unit 1626